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OFFICE OF PETITIONS

In re Application of
Rodney Senior
Application No. 09/805,950
Filed: March 15, 2001
Attorney Dkt. No.: 13620

ON PETITION

This is a decision on the "Petition under 37 CFR 1.181 For Nunc Pro Tunc Payment of Extension of Time Or, In the Alternative, Withdrawing the Holding of Abandonment", filed June 11, 2008. In the alternative, petitioner has requested treatment under 37 CFR 1.137(b).

The petition to withdraw the holding of abandonment is **Dismissed**.

The petition to revive the application under 37 CFR 1.137(b) is **Granted**.

This above-identified application was held abandoned for failure to timely file a response to a final Office Action which was mailed on December 13, 2006. The final Office Action set a three (3) month shortened statutory period for reply. No extensions of time were obtained under the provisions of 37 CFR §1.136(a). Accordingly, this application became abandoned on March 14, 2007. A Notice of Abandonment was mailed on July 5, 2007.

Petition Under 37 CFR 1.181

Petitioner argues for *nunc pro tunc* payment for the extension of time in the above-identified application, which is the parent of the Continuation in Part " hereinafter CIP" application no. 11/810,638, in order to establish co-pendency. Applicant seeks to rely on the prior submissions of general authorizations to charge petitioner's deposit account in the above-identified application and the general authorization filed in the CIP application.

Petitioner's argument has been considered but is not persuasive to establish the holding of abandonment should be withdrawn. To facilitate processing, any petition for

an extension of time (or petition to revive under 37 CFR 1.137(b)) in which a continuing application is filed in lieu of a reply should specifically refer to the filing of the continuing application and also should include an express abandonment of the prior application conditioned upon the granting of the petition and the granting of a filing date to the continuing application. A review of the record shows that an extension of time nor any other reply including notifying the Office that a CIP had been filed was submitted in the above-identified application.

An extension of time will not be effected in the prior application by filing a petition for an extension of time, extension fee, or fee authorization, in the continuing application. This is because the petition for an extension of time (or constructive petition under 37 CFR 1.136(a)(3)) must be directed toward and filed in the application to which it pertains in accordance with 37 CFR 1.4 and 1.5. See MPEP 710.02(e)

As such, a finding to withdraw the holding of abandonment is not warranted.

Petition Under 37 CFR 1.137(b)

The petition is **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a continuing application under 37 CFR 1.53(b); (2) the petition fee of \$770.00 ; and (3) a proper statement of unintentional delay.

This application is being revived solely for purposes of continuity. As continuity has been established by this decision, the application is again abandoned in favor of continuing application No. 11/810,638 .

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3215.



Charlema R. Grant
Petitions Attorney
Office of Petitions